

## ICO consultation on the draft right of access guidance

The right of access (known as subject access) is a fundamental right of the General Data Protection Regulation (GDPR). It allows individuals to find out what personal data is held about them and to obtain a copy of that data. Following on from our initial GDPR guidance on this right (published in April 2018), the ICO has now drafted more detailed guidance which explains in greater detail the rights that individuals have to access their personal data and the obligations on controllers. The draft guidance also explores the special rules involving certain categories of personal data, how to deal with requests involving the personal data of others, and the exemptions that are most likely to apply in practice when handling a request.

We are running a consultation on the draft guidance to gather the views of stakeholders and the public. These views will inform the published version of the guidance by helping us to understand the areas where organisations are seeking further clarity, in particular taking into account their experiences in dealing with subject access requests since May 2018.

If you would like further information about the consultation, please email [SARguidance@ico.org.uk](mailto:SARguidance@ico.org.uk).

Please send us your response by 17:00 on **Wednesday 12 February 2020**.

### Privacy statement

For this consultation, we will publish all responses received from organisations but we will remove any personal data before publication. We will not publish responses received from respondents who have indicated that they are an individual acting in a private capacity (e.g. a member of the public). For more information about what we do with personal data [see our privacy notice](#).

Please note, your responses to this survey will be used to help us with our work on the right of access only. The information will not be used to consider any regulatory action, and you may respond anonymously should you wish.

Please note that we are using the platform Snap Surveys to gather this information. Any data collected by Snap Surveys for ICO is stored on UK servers. [You can read their Privacy Policy.](#)

Q1 Does the draft guidance cover the relevant issues about the right of access?

- ☒ Yes
- ☐ No
- ☐ Unsure/don't know

If no or unsure/don't know, what other issues would you like to be covered in it?

Q2 Does the draft guidance contain the right level of detail?

- ☒ Yes
- ☐ No
- ☐ Unsure/don't know

If no or unsure/don't know, in what areas should there be more detail within the draft guidance?

Q3 Does the draft guidance contain enough examples?

- ☒ Yes
- ☐ No
- ☐ Unsure/don't know

If no or unsure/don't know, please provide any examples that you think should be included in the draft guidance.

Q4 We have found that data protection professionals often struggle with applying and defining 'manifestly unfounded or excessive' subject access requests. We would like to include a wide range of examples from a variety of sectors to help you. Please provide some examples of manifestly unfounded and excessive requests below (if applicable).

Please see comments in Q8 regarding the application of the manifestly unfounded and excessive request provisions to bulk requests received via third parties.

Q5 On a scale of 1-5 how useful is the draft guidance?

1 – Not at all useful	2 – Slightly useful	3 – Moderately useful	4 – Very useful	5 – Extremely useful
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Q6 Why have you given this score?

BGL receives regular rights requests from consumers and is of the view that the proposed guidance provides clear and useful information on the ICO's expectations in how such requests should be dealt with. BGL would however like to submit some feedback in relation to the areas of the proposed guidance dealing with requests via third party online portals and bulk requests. Please see question 8 for details.

Q7 To what extent do you agree that the draft guidance is clear and easy to understand?

Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Q8

Please provide any further comments or suggestions you may have about the draft guidance.

BGL would like to submit the following comments in relation to the areas of the proposed guidance dealing with requests via third party online portals and bulk requests.

**Do we have to respond to requests made via a third party online portal?**

BGL would like to highlight the challenges faced in dealing with bulk rights requests via third party companies. These are typically companies that advertise themselves to consumers as being able to allow consumers to make multiple access rights requests, often alongside deletion and objection requests. The services are regularly positioned as allowing customers access to all their data and in some cases misleadingly give the impression that the companies have signed up to the third party service when this is not the case or give the impression that the company is obliged to respond via the third party online portal when this is not the case.

BGL has in the past contacted the ICO with its concerns regarding the practices of such companies who try to force companies to agree to terms and conditions to sign up to services in order to be able to view a SAR request allegedly made by one of their customers. In one case, the terms and conditions required the company to agree to the possibility of paying fees in the future and there were no assurances regarding the security of such services.

The clarification in the draft guidance that companies are not required to pay a fee or sign up to a service in order to receive a SAR is helpful and BGL would submit that this is an important clarification that should remain in the guidance.

BGL also remain concerned that these companies are still misleading consumers into believing that a valid SAR request has been made on their behalf which could lead to unnecessary complaints being made by consumers when they do not receive a response to their request. We would suggest that the guidance should also address the ICO's expectations in terms of how such third party companies promote their services to consumers and what information they give to consumers regarding the validity of the request they make on their behalf, for example, making clear the exemptions that may apply to their request or making it clear that the company may need to contact them directly regarding the request.

Q8 Please provide any further comments or suggestions you may have about the draft guidance.

**How should we deal with bulk requests?**

Although BGL agrees that an individual request within a bulk request should be considered on its individual merits, further clarification as to a Data Controller's obligations in these circumstances would be helpful. Specifically, the third bullet point under this section states that:-

*"If a request is made by a third party on behalf of an individual, the behaviour of the third party should not be taken into account in determining whether a request is manifestly unfounded or excessive."*

Where a third party is acting on behalf of an individual in making the request, the behaviour of the third party is likely to be extremely relevant. For example, if the third party is making repeated requests for the same data or making unreasonable demands in relation to the request, BGL would submit that this behaviour should not be disregarded. If such behaviour by the data subject would have meant the request could be deemed manifestly unfounded or excessive, then the same behaviour by a third party acting on the data subject's behalf should be treated in the same way. The current wording in this section of the guidance would leave it open for third parties to argue that the request could never be deemed unfounded or excessive, notwithstanding how reasonable their behaviour.

Q9 Are you answering as:

- ☐ An individual acting in a private capacity (eg someone providing their views as a member of the public)
- ☐ An individual acting in a professional capacity
- ☒ On behalf of an organisation
- ☐ Other

Please specify the name of your organisation:

BGL Group Limited

What sector are you from:

Financial Services

Q10 How did you find out about this survey?

- ☐ ICO Twitter account
- ☒ ICO Facebook account

- ☐ ICO LinkedIn account
- ☐ ICO website
- ☐ ICO newsletter
- ☐ ICO staff member
- ☐ Colleague
- ☐ Personal/work Twitter account
- ☐ Personal/work Facebook account
- ☐ Personal/work LinkedIn account
- ☐ Other

Thank you for taking the time to complete the survey.



